

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

	)	<b>MDL No. 1456</b>
<b>IN RE PHARMACEUTICAL INDUSTRY</b>	)	<b>Master File No. 01-12257-PBS</b>
<b>AVERAGE WHOLESALE PRICE LITIGATION</b>	)	
<hr/>	)	<b>Judge Patti B. Saris</b>
	)	
<b>THIS DOCUMENT RELATES TO:</b>	)	
<b>State of California, <i>ex rel.</i> Ven-A-Care v.</b>	)	
<b>Abbott Laboratories, <i>et al.</i></b>	)	
<b>CASE #: 1:03-cv-11226-PBS</b>	)	
	)	

**STATE OF CALIFORNIA'S AND RELATOR'S STATUS REPORT DECEMBER 1, 2004**

The undersigned counsel, on behalf of plaintiffs STATE OF CALIFORNIA (“CALIFORNIA”) and Relator, VEN-A-CARE OF THE FLORIDA KEYS, INC. (“VEN-A-CARE” or “RELATOR”), hereby submit the attached Status Report to the Court in accordance with the Court’s June 17, 2004 Procedural Order.

Respectfully submitted,

**BILL LOCKYER**  
Attorney General for the State of California

Dated: December 1, 2004.

By: /s/ Brian V. Frankel  
**BRIAN V. FRANKEL**  
 CA State Bar No.: 116802  
 Supervising Deputy Attorney General  
 Bureau of Medi-Cal Fraud & Elder Abuse  
 OFFICE OF THE ATTORNEY GENERAL  
 California Department of Justice  
 1455 Frazee Road, Suite 315  
 San Diego, California 92108  
 Tel: (619) 688-6065  
 Fax: (619) 688-4200  
**Attorneys for the Plaintiff, State of California**  
**THE BREEN LAW FIRM, P.A.**

Dated: December 1, 2004.

By: /s/ James J. Breen  
JAMES J. BREEN  
FL Bar No. 297178  
3562 Old Milton Parkway  
Alpharetta, Georgia 30005  
Tel: (770) 740-0008  
Fax: (770) 740-9109

**Attorneys for Relator,  
Ven-A-Care of the Florida Keys, Inc.**

**MDL 1456 Status Report**  
**State of California, *ex rel.* Ven-A-Care v. Abbott Laboratories, *et al.***  
**Case No.: 1:03-cv-11226-PBS**

**Motion to Remand Case to State Court:**

Notice of withdrawal of such motion filed 9/29/04.

**Motion to Dismiss Medicaid Rebate Fraud Claims Without Prejudice:**

Notice of withdrawal of such motion filed 9/29/04.

**Complaint-in-Intervention:**

Plaintiffs intend to file an amended Complaint-in-Intervention, pursuant to the Federal Rules of Civil Procedure, which will supersede the original Complaint-in-Intervention filed against defendants ABBOTT LABORATORIES, INC., WYETH INC., and WYETH PHARMACEUTICALS, INC. in California State Court on January 7, 2003.

**Anticipated Filings:**

The Attorney General of California will file additional motions, under seal, as are necessary to fully and effectively prosecute this case under the California False Claims Act (Cal. Gov't. Code §§ 12650, *et seq.*). In addition, plaintiffs will request a Status Conference and the entry of a Case Management Order by a motion to be filed soon.

**Tutorial:**

California and Ven-A-Care had requested that the Court permit their participation in the planned December tutorial. On November 10, 2004, Judge Saris issued an order stating that “[t]he December tutorial was suggested in the context of the pending motion for class certification.” The Court indicated that it would welcome a tutorial when it becomes relevant to a

pending motion. It is anticipated that California and Ven-A-Care will be requesting that the Court authorize a tutorial in the California case at a later date.

### **CERTIFICATE OF SERVICE**

I, Brian V. Frankel, hereby certify that on December 1, 2004, I caused a true and correct copy of the foregoing, **STATE OF CALIFORNIA'S AND RELATOR'S STATUS REPORT DECEMBER 1, 2004**, to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending a copy to Verilaw Technologies for posting and notification to all parties.

Dated: December 1, 2004.

/s/ Brian V. Frankel  
BRIAN V. FRANKEL  
Supervising Deputy Attorney General  
Bureau of Medi-Cal Fraud & Elder Abuse  
OFFICE OF THE ATTORNEY GENERAL  
California Department of Justice  
1455 Frazee Road, Suite 315  
San Diego, CA 92108  
Tel: (619) 688-6065  
Fax: (619) 688-4200